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May 7, 2014

VIA FACSIMILE AND ECF

Honorable Naomi Reice Buchwald
United States District Judge
United States Courthouse
500 Pearl Street
New York, NY 10007

Re: United States v. Rajarengan Rajaratnam, 13 Cr. 211 (NRB)

Dear Judge Buchwald:

We represent Rengan Rajaratnam in the above matter. We respectfully write to ask that the Court direct the government to produce immediately all trial exhibits (including summary exhibits) previously ordered produced by May 2nd. Because the government has not followed the Court's scheduling order, the defense is significantly prejudiced in its ability to prepare for trial.

The Court directed that by Friday, May 2, 2014, the government identify the documents that it intends to use at trial in an exhibit list.¹ That Order presumed that all exhibits would have been produced by that date. Rather than comply with the Order, the government produced to us without an index approximately 1,000 exhibits,² including one (GX 300) that is 5.89 gigabytes in size, contains at least 16,000 files, appears to catalogue *all* the trading at Galleon from 2006 through 2009. This is well outside the time period of the charged conspiracy, and this document alone appears to contain potentially millions of trades. The document requires 16,000 "mouse clicks" *just to view*. The volume and size of the document make it impossible to know which trades the government will rely upon at this insider trading trial. The government states that at some unspecified point in the future it will pick and choose from this unwieldy exhibit which information it will present to the jury by offering summary exhibits, but it has not produced these summary exhibits.

The government has not complied with the Court's scheduling Order. It has arrogated to itself to determine how and when to produce the essential summary exhibits to the defense. The government's approach will result in trial by ambush, precisely what the Order was designed to

¹ See February 6, 2014 Memo Endorsement Order (ECF No. 33).

² The government has stated that it will provide an index by today.

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avoid. We respectfully submit that the Court's scheduling Order did not intend for the government to produce a massive gob of data on May 2nd and then later, at some unspecified date, produce the essential summary exhibits which will show what the government will "really" present to the jury.

The government asked the defense to identify the portions of GX 300 (and other large documents³) that the defense believes to be irrelevant. But this shifts the burden to the defense to identify which exhibits the government will rely upon at trial.

The government's actions have prejudiced the defense because we are obliged to file *in limine* motions by Friday. When the schedule was set, the defense assumed that by now we would have the government's true exhibit list, including summary exhibits. Instead, we have been given a document that apparently lists every trade by Galleon over a 4-year period and have been given no guide to it.

This is not to say that we will not comply with the Court's Order regarding our obligations. We are prepared to file motions this Friday—including one aimed at the discrete instances of Rule 404(b) evidence noticed by the government. We also will work with the government concerning potential redactions of the 38 tapes it marked as exhibits.

We regret that our attempts to work with the government regarding the summary exhibits and an adequate exhibit list require the Court's intervention. We respectfully request that the Court direct the government to comply immediately with this Court's February 6 Order and produce a full exhibit list, including its summary exhibits.

Respectfully submitted,



Daniel M. Gitner

cc: Christopher D. Frey (by e-mail)
Randall W. Jackson (by e-mail)

³ The government also has marked as exhibits over one-thousand pages of telephone records, many from outside the time of the conspiracy. Presumably, the government intends to use summary exhibits for these too, but such summary exhibits were likewise not produced.